

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

LAWRENCE I. FRIEDMANN,

Plaintiff,

- against -

RAYMOUR FURNITURE CO., INC., and
LUCY GOLDSTEIN, individually,

Defendants.

12 CV 1307 (LDW)(AKT)

**SECOND AMENDED JOINT
PRE-TRIAL ORDER**

WEXLER, District Judge:

The parties having conferred among themselves and pursuant to Rule 4.A. of the Individual Rules of the Honorable Leonard D. Wexler, U.S.D.J., Plaintiff Lawrence I. Friedmann (“Plaintiff” or “Friedmann”) and Defendant Raymour Furniture Company, Inc., d/b/a Raymour & Flanigan Furniture (“Defendant” or “Raymour & Flanigan”),¹ submit the following Second Amended Joint Pre-Trial Order in this matter.

I. FULL CAPTION

The full caption of this case appears in the caption to this Second Amended Joint Pre-Trial Order.

-
1. Plaintiff’s Statement: By Order dated October 16, 2012, this Court dismissed all of Plaintiff’s claims under the New York State Human Rights Law, including the claims against the individual Defendant. “Defendant Raymour [& Flanigan]’s motion to dismiss is granted . . . to the extent that Plaintiff’s NYSHRL claims are dismissed, but is otherwise denied.” Of Plaintiff’s four (4) original causes of action, two (2) remain against Raymour & Flanigan: (i) age discrimination in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623 *et seq.* and (ii) disability discrimination in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112 *et seq.*

II. TRIAL COUNSEL

A. Trial Counsel for Plaintiff is as follows:

Walker G. Harman, Jr., Esq.
Peter J. Andrews, Esq.
The Harman Firm, PC
200 West 57th Street, Suite 900
New York, New York 10019
(212) 425-2600

B. Trial Counsel for Defendant is as follows:

Tara Eyer Daub, Esq.
Jessica Chiclacos, Esq.
Nixon Peabody LLP
50 Jericho Quadrangle
Suite 300
Jericho, New York 11753
(516) 832-7500 (telephone)
(516) 832-7555 (facsimile)

III. STATEMENT PERTAINING TO TRIAL

- A. Plaintiff's statement: Pursuant to the Court's Individual Practice Rule 4.A.iii., Plaintiff respectfully reiterates that he "demands a trial by jury." Compl. ¶ 10. It is Plaintiff's understanding that he will require approximately two (2) days to try this action. That estimate is not inclusive of the time required to select members of the jury or to cross-examine witnesses called by Defendant.
- B. Defendant's statement: Plaintiff has demanded a jury trial. Defendant estimates that the presentation of its case will take two (2) days.

IV. LIST OF FACT WITNESSES FOR CASE IN CHIEF

- A. Plaintiff reserves the right and intends to call the following witnesses to testify at trial:
1. Plaintiff Lawrence I. Friedmann (will testify in person)
 2. Lucy Goldstein (will be called to testify in person)
 3. Laura D'Ambrosio (will be called to testify in person)
 4. Patricia Delgenio (VP of Defendant's HR, will be called to testify in person)
 5. Rafael Gonzalez (Sales Associate, will be called to testify in person)

6. Karen Budhan Ali (Sales Associate, will be called to testify in person)
7. Nardia Palmatier (Sales Associate, will be called to testify in person)
8. Mark Forster (Sales Associate, will be called to testify in person)
9. Vasilos Toufexis (Sales Associate, will be called to testify in person)
10. Robert Ruvel (upon information and belief, also known as Robert Revel; Sales Associate, will be called to testify in person)
11. Trevor Lall (Sales Associate, will be called to testify in person)

Plaintiff reserves the right to call any witnesses at trial listed by Defendant or by Plaintiff. In addition, Plaintiff reserves the right to call at trial witnesses not listed above for impeachment and/or rebuttal purposes.

B. Defendant's witnesses:

1. Laura D'Ambrosio (in person)
2. Patricia Delgenio (in person)
3. Lucy Goldstein (in person)
4. Jim Powers (in person)
5. Christine Rowland (in person)

Defendant reserves the right to call any witnesses at trial listed by Plaintiff above or to not call any of the witnesses identified by Defendant. In addition, Defendant reserves the right to call at trial witnesses not listed above for impeachment and/or rebuttal purposes.

V. LIST OF EXPERT WITNESSES

1. Plaintiff's expert witness: None
2. Defendant's expert witness: None

VI. DEPOSITION TESTIMONY

- A. Plaintiff will offer the following deposition testimony in his case in chief in the event that witnesses are not able to provide live testimony at trial:

Deponent	Page(s)/Line(s)	Objections
Lucy Goldstein	13:20–14:7	Relevance
Lucy Goldstein	14:15–15:19	Relevance
Lucy Goldstein	3:19–21	Relevance
Lucy Goldstein	21:1–2	

Deponent	Page(s)/Line(s)	Objections
Lucy Goldstein	61:18–21	Relevance
Lucy Goldstein	66:5–8	Relevance
Lucy Goldstein	71:3–6	Relevance
Lucy Goldstein	77:18–25	
Lucy Goldstein	79:2–5	Relevance
Lucy Goldstein	79:15–21	
Lucy Goldstein	84:21–25	
Lucy Goldstein	85:1–2	
Lucy Goldstein	88:17–89:3	Relevance
Lucy Goldstein	92:7–19	Relevance
Lucy Goldstein	95:21–25	
Patricia Delgenio	13:16–14:16	Relevance
Patricia Delgenio	54:7–61:16	Relevance
Patricia Delgenio	61:19–67:5	Relevance
Patricia Delgenio	78:9–83:25	
Patricia Delgenio	81:7–14	
Patricia Delgenio	84:12–85:25	Relevance

Defendant reserves the right to use any testimony listed by Plaintiff above or to not use any of that testimony. In addition, Defendant reserves the right to use at trial testimony not explicitly listed above for impeachment and/or rebuttal purposes.

B. Defendant will offer the following deposition testimony in its case in chief:

Deponent	Page(s)/Line(s)	Objections
Plaintiff	30:8-31:18	Lack of foundation
Plaintiff	33:8-23	
Plaintiff	35:14-17	Lack of foundation
Plaintiff	36:5-37:5	
Plaintiff	37:12-15	Lack of foundation
Plaintiff	44:5-7	
Plaintiff	51:17-55:8	
Plaintiff	57:12-58:6	Irrelevant, misleading
Plaintiff	61:22-62:4	Irrelevant, misleading
Plaintiff	66:9-67:25	Lack of foundation; irrelevant; misleading
Plaintiff	73:4-10	Lack of foundation
Plaintiff	74:3-6	Lack of foundation
Plaintiff	75:12-18	
Plaintiff	85:13-87:11	Irrelevant
Plaintiff	95:14-98:10	
Plaintiff	104:22-105:7	

Plaintiff	110:14-111:4	Lack of foundation
Plaintiff	113:6-11	Lack of foundation
Plaintiff	146:16-147:5	
Plaintiff	148:12-18	
Plaintiff	156:10-17	Lack of foundation
Plaintiff	159:16-160:9	

Plaintiff reserves the right to use any testimony listed by Defendant above or to not use any of that testimony. In addition, Plaintiff reserves the right to use at trial testimony not explicitly listed above for impeachment and/or rebuttal purposes.

VII. EXHIBITS

A. The following table lists the exhibits that Plaintiff expects to offer as evidence at trial:

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
1–14	(Voluntarily rescinded)		
15	Plaintiff's Charge of Discrimination submitted to the Equal Employment Opportunity Commission ("EEOC")	FRIEDMANN001–08	
16	EEOC's Notice of Right to Sue issued Dec. 19, 2011	FRIEDMANN009–10	
17	Plaintiff's earnings and commissions during 2010–11	FRIEDMANN011–22	Relevance
18	Associate Sales Projection and Flash Report	FRIEDMANN023–25	Relevance
19	Associate Business Planner	FRIEDMANN026	Relevance
20	Associate Bedding Budget	FRIEDMANN027	Relevance
21	Plaintiff's Earnings Statement from subsequent employer, La-Z-Boy	FRIEDMANN066	Authenticity

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
22	Plaintiff's Earnings Statement from subsequent employer, Jos. A Bank	FRIEDMANN067	Authenticity
23	Plaintiff's Unemployment Insurance for 2011 Form 1099-G	FRIEDMANN068	Authenticity
24	Plaintiff's pension Form 1099-R	FRIEDMANN070	Authenticity
25	Plaintiff's health insurance claim documents	FRIEDMANN029-54, FRIEDMANN056-62	Authenticity
26	Plaintiff's Social Security benefits statement	FRIEDMANN063-65, FRIEDMANN069	Authenticity
27	(Voluntarily rescinded)		
28	Letters regarding COBRA, Aug. 24, 2011	D 000001-02	Relevance
29	Letter regarding benefits at Plaintiff's termination, June 29, 2011	D 000002-09	Relevance
30	Document regarding life insurance, June 29, 2011	D 000010	Relevance
31	Payroll documents for Plaintiff	D 000011-13, D 000016	
32	Notice of Plaintiff's at-will status, Oct. 7, 2009	D 000014-15	
33	Email to and from payroll department	D 000017-19, D 000031	Relevance

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
34	Automatic pay plan changes, Oct. 21, 2005	D 000020	Relevance
35	Plaintiff's application to work for Defendant, Oct. 20, 2005	D 000021–22	
36	New hire report	D 000023–24, D 000449	Relevance
37	Plaintiff's Form W-4, 2005	D 000025–26	Relevance
38	Defendant's internal at-hire documentation regarding Plaintiff	D 000027–30	Relevance
39	Plaintiff's direct deposit authorization	D 000032–34	Relevance
40	<i>Horarium</i> for Plaintiff	D 000035	Relevance
41	Performance Evaluation and Development Form for Plaintiff annotated "GREAT MONTH"	D 000036	Relevance
42	Performance Evaluation and Development Form for Plaintiff dated June 7, 2008, annotated "Works well [sic] of all"	D 000037	Relevance
43	Performance Evaluation and Development Form for Plaintiff dated Aug. 17, 2008, annotated "has had a bad month—vacations—etc."	D 000038	Relevance

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
44	Coaching for Success plan for Plaintiff, purportedly signed by manager only, May 7, 2011	D 000039	
45	Coaching for Success plan for Plaintiff, signed May 23, 2011	D 000042–44	
46	Sales performance evaluation, purportedly for Jan. 1–June 3, 2011	D 000045	
47	Annotated document, Nov. 11, 2008	D 000046	Relevance
48	Annotated document, Nov. 1, 2008	D 000047	Relevance
49	Weekly Associates Commission Statement, Dec. 19, 2009–Jun. 24, 2011	D 000048–D 000126	Relevance
50	EEOC letter to Defendant, Dec. 12, 2011	D 000127–28	
51	EEOC Charge of Discrimination produced by Defendant, signed Oct. 21, 2011	D 000129–31	
52	EEOC Notice of Right to Sue produced by Defendant, mailed Dec. 19, 2011	D 000132–33	
53	Defendant's production entitled "Professional Conduct & Anti-Harassment Awareness Raymour & Flanigan Furniture"	D 000134–57	

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
54	Defendant's production entitled "Professional Conduct & Harassment Awareness Training for Associates"	D 000158-73	
55	Defendant's No Discrimination and No Harassment Policy signed Mar. 7, 2010	D 000175	
56	Receipt and Acknowledgement of Professional Conduct & Harassment Awareness Training at Raymour & Flanigan Furniture signed by Plaintiff Mar. 7, 2010	D 000176	
57	Receipt and Acknowledgement of Professional Conduct & Harassment Awareness Training at Raymour & Flanigan Furniture signed by Lucy Goldstein, Nov. 1, 2006	D 000177	
58	Receipt and Acknowledgement of Professional Conduct & Harassment Awareness Training at Raymour & Flanigan Furniture signed by Laura D'Ambrosio, July 30, 2007	D 000178	
59	Raymour & Flanigan Furniture Associate Handbooks	D 000179-408	
60	Email from Laura D'Ambrosio regarding Plaintiff, June 21, 2011	D 000409	

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
61	Lucy Goldstein's "Receipt and Acknowledgment of Raymour & Flanigan Associate Handbook and Acknowledgement of At-Will Employment Status" and Addendum signed Nov. 4, 2009	D 000410-11	
62	Lucy Goldstein's "Receipt and Acknowledgement of Professional Conduct & Harassment Awareness Training at Raymour & Flanigan Furniture" signed Oct. 1, 2007	D 000412	
63	Lucy Goldstein's "Receipt and Acknowledgement of Professional Conduct & Harassment Awareness Training at Raymour & Flanigan Furniture" signed Nov. 1, 2006	D 000413	
64	IRS Form W-4 for Lucy Goldstein, signed Mar. 18, 2006	D 000414-15	Relevance
65	Email from HR to Lucy Goldstein, Sept. 19, 2005	D 000416	Relevance
66	New Hire information for Lucy Goldstein, Nov. 10, 2004	D 000417, D 000447	Relevance
67	Lucy Goldstein's application for employment, signed Sept. 23, 2004	D 000418-19	Relevance
68	IRS Form W-4 for Lucy Goldstein, signed Nov. 10, 2004	D 000420	Relevance

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
69	Lucy Goldstein's Withholding Allowance Certificate	D 000421–22	Relevance
70	Lucy Goldstein's Information Technology Access Request Forms signed Nov. 10, 2004	D 000423	Relevance
71	Lucy Goldstein's Raymour & Flanigan Furniture 1099 Stats	D 000424	Relevance
72	Lucy Goldstein's Direct Deposit Authorization, Nov. 10, 2004	D 000425	Relevance
73	Lucy Goldstein Sales Agreement Form, Nov. 10, 2004	D 000426–27	Relevance
74	Email from Heather Lukowski to Rebecca Landon regarding Lucy Goldstein, Aug. 23, 2011	D 000428	Relevance
75	Lucy Goldstein record of medical leave, Aug. 2011	D 000429	Relevance
76	Emails regarding Lucy Goldstein between Patricia Delgenio, Erin Brundige, Jenna Casullo, Christine Crosby, and Lucy Goldstein, Aug. 9, 2011	D 000430	Relevance
77	Email from Heather Lukowski to Rebecca Landon regarding Lucy Goldstein, Aug. 8, 2011	D 000431	Relevance

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
78	Email regarding Lucy Goldstein from Aubrey Branagan to Rebecca Landon, Feb. 7, 2011	D 000432	Relevance
79	Lucy Goldstein "2011 Sales Pay Plan Changes" purportedly effective Jan. 1, 2011 (redacted by Defendant)	D 000433	Relevance
80	Emails between Lucy Goldstein and Rebecca Landon regarding Lucy Goldstein's Aug. 1, 2010 punch-out time, Aug. 9, 2010	D 000434	Relevance
81	Record of pay plan increase for Lucy Goldstein, purportedly effective Jan. 2, 2010	D 000435	Relevance
82	Email from Holly Heinze-Coolican to Christine Crosby regarding <i>inter alia</i> Lucy Goldstein's hours, July 21, 2009	D 000436	Relevance
83	Payroll documents for Lucy Goldstein, Oct. 2008	D 000437	Relevance
84	Payroll documents for Lucy Goldstein, Apr. 2007	D 000438	Relevance
85	Payroll documents for Lucy Goldstein, Oct. 2006	D 000439, D 000441	Relevance
86	Lucy Goldstein Automatic Pay Plan Changes, Sept. 23, 2006	D 000440	Relevance

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
87	Emails between Payroll Department and Michael Goldberg and Laurie Hammon regarding Lucy Goldstein, Mar. 2005–Apr. 2005	D 000442–44	Relevance
88	Photocopy of Lucy Goldstein's New York State Driver License	D 000445	Relevance
89	Photocopies of a blank check of Lucy Goldstein's ²	D 000446, D 000448	Relevance
90	(Voluntarily rescinded)		
91	(Voluntarily rescinded)		
92	(Voluntarily rescinded)		
93	(Voluntarily rescinded)		
94	Performance improvement plan of Rafael Gonzalez, signed May 15, 2011	D 000507–08	Relevance
95	Performance improvement plan of Rafael Gonzalez, signed July 17, 2011	D 000509–10	Relevance

2. Named incorrectly therein as "LUCY M. GOLDSTEIN."

Ex. No.	Description	Bates No. (where applicable)	Defendant's Objections
96	Sales Associate Flash Report, June 17, 2011	FRIEDMANN071-76	Plaintiff did not disclose this document until June 26, 2013. Plaintiff's failure to produce this document in response to Defendant's discovery requests during discovery (closed on 2/25/13), or in the original proposed Pretrial Order dated May 14, 2013, is an abuse of his discovery obligations and the document should be excluded under FRCP Rule 37 and other applicable rules. Relevance; Authenticity; Hearsay

Plaintiff reserves the right to use any exhibits at trial listed above by Defendant or to not use any of the exhibits identified by Plaintiff. In addition, Plaintiff reserves the right to use at trial exhibits not listed above for impeachment and/or rebuttal purposes.

A. Defendant's Exhibits for its Case-In-Chief:

Exhibit	Description	Bates Number(s)	Plaintiff's Objection
A	Payroll Connection Form regarding Plaintiff's termination	D 000011	

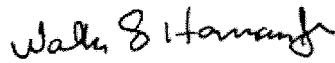
Exhibit	Description	Bates Number(s)	Plaintiff's Objection
B	Plaintiff's Receipt and Acknowledgment of Raymour & Flanigan Associate Handbook and Acknowledgment of At-Will Employment Status	D 000014	
C	Plaintiff's Receipt and Acknowledgment of Addendum to the Associate Handbook	D 000015	
D	Payroll Connection Form regarding Plaintiff's transfer to Garden City showroom	D 000016	
E	Plaintiff's Employment Application	D 000021- 000022	
F	Plaintiff's Sales Agreement Form	D 000029 - 000030	
G	Undated Performance Evaluation for Plaintiff	D 000036	
H	June 7, 2008 Performance Evaluation for Plaintiff	D 000037	
I	August 17, 2008 Performance Evaluation for Plaintiff	D 000038	
J	May 7, 2011 Coaching for Success Plan for Plaintiff	D 000039- 000040	
K	May 23, 2011 Coaching for Success Plan for Plaintiff	D 000041- 000042	
L	June 13, 2011 Action Plan & Performance Agreement for Plaintiff	D 000043- 000044	
M	Performance Evaluation and Development Form for 2011 for Plaintiff	D 000045	

Exhibit	Description	Bates Number(s)	Plaintiff's Objection
N	Plaintiff's 2010 Commission Statements	D 000049- 000101	
O	Plaintiff's 2011 Commission Statements	D 000102- 000126	
P	Professional Conduct & Anti-Harassment Awareness Presentation	D 000134- 000157	
Q	Professional Conduct & Harassment Awareness Training for Associates Presentation	D 000158- 000175	
R	Plaintiff's Mach 7, 2010 Receipt of No Discrimination and No Harassment Policy	D 000175- 000176	
S	Lucy Goldstein's November 1, 2006 Receipt and Acknowledgement of Harassment Training	D 000177	
T	Laura D'Ambrosio's January 30, 2007 Receipt and Acknowledgment of Harassment Training	D 000178	
U	Laura D'Ambrosio's June 21, 2011 E-mail regarding Plaintiff	D 000409	
V	Raymour & Flanigan's March 2010 Associate Handbook	D 000179 - 000254	
W	Raymour & Flanigan's February 2, 2011 Associate Handbook	D 000355 – 000331	
X	Raymour & Flanigan's May 25, 2011 Associate Handbook	D 000332 - 000408	

Exhibit	Description	Bates Number(s)	Plaintiff's Objection
Y	Plaintiff's 2010 federal and state tax returns	Plaintiff produced these documents without Bates numbers	Relevance
Z	Plaintiff's 2011 federal and state tax returns	Plaintiff produced these documents without Bates numbers	Relevance
AA	Plaintiff's 2012 W-2 Forms	Plaintiff produced these documents without Bates numbers	Relevance

Defendant reserves the right to use any exhibits at trial listed by Plaintiff above or to not use any of the exhibits identified by Defendant. In addition, Defendant reserves the right to use at trial exhibits not listed above for impeachment and/or rebuttal purposes.

Dated: September 4, 2013



Walker G. Harman, Jr. [WH-8044]
Peter J. Andrews [PA-3295]
Kimberly S. Thomsen [KT-3226]
THE HARMAN FIRM, PC
Attorneys for Plaintiff
200 West 57th Street, Suite 900
New York, New York 10019
(212) 425-2600
wharman@theharmanfirm.com
pandrews@theharmanfirm.com
kthomsen@theharmanfirm.com



Tara Eyer Daub, Esq. [TE-7943]
Jessica Chiclacos, Esq. [JG-2534]
NIXON PEABODY LLP
Attorneys for Defendant Raymour & Flanigan
50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 832-7500
tdaub@nixonpeabody.com
jchiclacos@nixonpeabody.com

SO ORDERED:

Hon. Leonard D. Wexler
United States District Judge